SASKATCHEWAN HUMAN RIGHTS COMMISSION

A Guide to Application Forms & Interviews for Employers and Job Applicants

The Saskatchewan Human Rights Code

Promoting and protecting individual dignity and equal rights - that's the goal of *The Saskatchewan Human Rights Code*. It's the job of the Saskatchewan Human Rights Commission to discourage and eliminate discrimination against everyone under provincial jurisdication.

It's against the law to discriminate in the workplace on the basis of:

- ancestry (includes colour and perceived race)
- nationality or place of origin
- religion and religious creed
- physical or mental disability
- sex (includes pregnancy and sexual harassment)
- marital status
- family status (parent-child relationships)
- receipt of public assistance
- sexual orientation
- age (18 or more)

Everything related to employment is protected under the *Code*. Workplaces cannot discriminate in:

- wages
- benefits
- promotions
- day-to-day operations
- hiring and firing
- recruitment ads
- applications forms
- interviews.

The hiring process

Most employers know they can't refuse to hire someone because of his ancestry, for example, or because she is married. But what many don't know is that *The Saskatchewan Human Rights Code* also stops employers from asking certain questions on application forms or in interviews.

This guide will help you sort out which questions are okay and which aren't. The chart which follows is not an exhaustive list, but it will answer most of your questions. If you have others, call either the Regina or Saskatoon office for more information.

The best person for the job

The *Code* doesn't stop an employer from finding the best person for the job. But what employers can't do is to ask questions that allow them to eliminate candidates based on stereotypical notions about who can do the job and who can't. For example, some people still think that pregnant women shouldn't be working, even if they are able to do the job. Others may not want to hire someone with diabetes or epilepsy, even though they might be the best candidate.

That's why the *Code* says employers can't ask certain questions - those where the information might influence the selection process in a way that discriminates. Those questions can't be asked on application forms or during job interviews. After all, the prohibited questions won't help employers find the best candidates because they're not relevant to the job.

When it's okay to ask

Even though there are some questions employers shouldn't be asking during interviews and on application forms, it's often okay to ask those things once someone is an employee. For example, employers can't ask an applicant whether she's married, but once someone's been hired, that information will likely be needed for administrative purposes.

Can employers ask about disabilities?

Yes, the employer can ask some questions about disabilities. After all, employers need to know whether applicants can do the job safely and efficiently. But, on the other hand, it's easy to make assumptions about what people with disabilities are able to do.

The best way to guard against that kind of false assumption is to ask only these two questions:

1. Do you have a disability that will interfere with your ability to perform the job for which you have applied?

If the answer to that question is yes, the employer must then ask:

2. What functions can you not perform and what accommodations could be made which would allow you to do the work adequately?

Employers are **not** allowed to ask about the nature or severity of a disability.

What is accommodation?

An employer must assist people with special needs - that's called accommodation. Accommodation is required unless it would cause undue hardship for the employer. Some examples of accommodation:

- employers may have to rearrange work schedules for employees who are unable to work on Saturday because of their religion;
- employers may have to provide technical aids so persons with disabilities can participate in their workplaces.

Can employers ask for a medical?

Before employment, a medical examination is not allowed. Employers can't ask questions about an applicant's medical history either.

After employment (or an offer of employment), there are times when a medical examination is allowed, but those circumstances are very limited. If a certain ability is needed to do a job, then a medical or other test can be done to ensure applicants meet the required standard. Employers should also know they have to give the same test to everyone who is offered the job.

What about drug tests?

During hiring: Testing identifies persons with disabilities and targets them for discriminatory treatment. Therefore, in most situations it will not be allowed under the *Code*.

During employment: Testing has to achieve a purpose rationally connected to the work, such as preventing impairment in safety sensitive situations. Testing will only be acceptable in exceptional circumstances that must be justified by the employer in accordance with the criteria established by the Supreme Court of Canada.

See the Saskatchewan Human Rights Commission drug testing policy paper on the Commission Web site or call the Saskatchewan Human Rights Commission for more information.

Employment agencies

Employment agencies are subject to the *Code*, as well. If they screen someone out on the basis of pregnancy, for example, or ancestry or family status, or any of the other categories protected by the *Code*, they could have a human rights complaint brought against them. That's also true if they ask questions that are prohibited during the hiring process.

For further information contact The Saskatchewan Human Rights Commission:

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Web site: www.shrc.gov.sk.ca
Email: shrc@shrc.gov.sk.ca

Inquiries Before Hiring	Don't Ask	Okay to Ask
1. Address	Don't ask about foreign addresses which would indicate national origin.	Okay to ask about current and previous addresses in Canada and how long applicant stayed there.
2. Birthplace, nationality, ancestry, place of origin	Don't make any inquiry about place of birth or national origin. That includes asking about the national origin of relatives or asking for a birth certificate or baptismal certificate.	**After hiring**, may ask for birth certificate.
3. Photographs	**Before hiring**, don't ask for photo.	**After hiring**, okay to ask for photos if needed.
4. Religion	**Before hiring**, don't ask anything that would identify religious affiliation. That includes asking for a pastor's recommendation or reference.	**After hiring**, may ask about religion to determine when leave-of-absence may be required for the observance of religious holidays.
5. Citizenship	Don't ask about an applicant's citizenship status - it would reveal applicant's nationality, ancestry or place of origin. That includes questions about proof of citizenship or the date citizenship was received.	May ask if applicant is legally entitled to work in Canada.
6. Education	Don't ask about religious or ethnic affiliation of educational institutions.	Okay to ask about schools where education was obtained and about foreign language skills.
7. Relatives	Before hiring, don't ask questions that would require someone to reveal their marital or family status.	**After hiring**, may ask for a contact name in case of emergency.
8. Organization		Okay to ask about clubs and organizations that would reveal a person's affiliation based on ancestry, sexual orientation, disability, etc., as long as applicants are told: "You may decline to list organizations which would indicate your religion, ancestry, etc."
9. Work schedule		May ask applicants whether they are able to work the required schedule. If applicants are not able to work the required schedule because of religious practices or family needs, the employer must determine if accommodation is possible.
10. Sex	On the application form, don't ask about the sex of an applicant.	

Inquiries Before Hiring	Don't Ask	Okay to Ask
11. Age	**Before hiring**, don't ask for any record (like birth certificate) or other information that would reveal the applicant's age.	Okay to ask if the applicant is younger than the minimum age or older than the maximum age required by employment law.
12. Marital status	Don't ask whether an applicant is single, married, remarried, engaged, divorced, separated, widowed, living common-law. Don't ask a woman for her birth name.	Although you can't ask about an applicant's marital status, if the job requires it, you can ask if the applicant is willing to travel or be transferred.
13. Family status	Don't ask about the number of children or other dependents. Don't ask about child-care arrangements. Don't ask applicants whether they are pregnant, breastfeeding, using birth control or plan to have children.	May ask if applicants are able to work the required schedule. If they can't because of family needs, the employer must try to accommodate them.
14. Disability	Don't ask about disabilities or health problems except as set out in the adjacent column. Don't ask if the applicant has ever had previous work injuries or made a claim for Workers' Compensation.	The following questions should be asked: i) do you have a disability which will affect your ability to perform any of the functions of the job for which you have applied? If the above answer is "yes," then ask: ii) what functions can you not perform and what accommodations could be made which would allow you to do the work adequately?
15. Height and weight	Don't ask unless it can be shown they are essential to the performance of the job.	
16. Sexual orientation	Don't ask about applicant's sexual orientation.	
17. Receipt of Public Assistance	Don't ask if applicant is receiving assistance under *The Saskatchewan Assistance Act* (welfare) or *The Saskatchewan Income Plan Act*.	

18. Drug testing is generally prohibited by human rights legislation. After a job offer has been made, testing may be acceptable in exceptional circumstances that must be justified by the employer in accordance with criteria established by the Supreme Court of Canada. Otherwide, drug testing is not allowed under *The Saskatchewan Human Rights Code*. If an employee has a drug-related disability, employers may be required to accommodate.